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/

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EQUAL ACCESS TO JUSTICE ACT AWARDS

REPORT TO CONGRESS

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Executive Summary

The Equal Access to Justice Act (EAJA) authorizes the award of attorney’s fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and adversary adjudications before federal agencies when the government’s position is not substantially justified. Section 4201 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act),¹ signed into law in March 2019, requires the Office of the Chairman of the Administrative Conference of the United States (ACUS) to establish a publicly available database (<https://eaja.acus.gov>) and prepare an annual report that accounts, on a fiscal-year basis, for all fee awards against the United States under EAJA.

In 2019, the Office of the Chairman established a reporting system to facilitate the data-collection process, worked with many relevant federal agencies to collect awards data, and developed a new publicly available, online, and searchable database on ACUS’s website to make the required information about EAJA awards easily accessible to the public. The first and second annual reports, covering Fiscal Year (FY) 2019 and FY 2020, respectively, were released on March 31, 2020, and March 30, 2021. This report covers the reporting period for FY 2021: October 1, 2020, through September 30, 2021.

In FY 2021, federal agencies reported paying more than \$112 million in awards of attorney’s fees and other expenses under EAJA.

- ♦ In total, 16 federal agencies reported 15,691 separate awards totaling \$112,229,032.01.
- ♦ Of the 15,691 total awards, 15,683 were made in court cases, and eight were made in adversary adjudications.
- ♦ In total, 40 federal agencies² reported paying no EAJA awards during FY 2021.
- ♦ Of the 58 agencies contacted, the Office of the Chairman achieved a 97 percent compliance rate. Just two agencies did not report by March 31, 2022, in response to the Office of the Chairman’s requests.

** All totals current as of March 31, 2022.*

¹ Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019) (codified at 5 U.S.C. § 504(e)–(h) and 28 U.S.C. § 2412(d)(5)–(8)).

² This number includes multiple subunits from the Department of the Treasury as outlined in Table 4. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, no matter how many subunits reported paying no awards.

Table 1. Summary of Agencies Reporting EAJA Awards (by total amount reported)

Agency	# of Awards Reported	Total Amount Reported
Social Security Administration	8,369	\$ 46,962,147.88
Department of Veterans Affairs	7,119	\$ 43,508,910.61
Department of Justice	23	\$ 7,398,751.89
Department of Homeland Security*	120	\$ 3,728,598.63
Department of Agriculture	21	\$ 2,657,203.30
Department of the Interior	11	\$ 2,506,789.43
Department of Commerce	2	\$ 2,400,000.00
Environmental Protection Agency	7	\$ 1,850,158.93
Department of Health and Human Services	6	\$ 664,354.08
Department of Energy	1	\$ 191,330.79
Department of Transportation	4	\$ 144,759.32
Department of Education	1	\$ 115,000.00
Department of Labor	4	\$ 72,600.00
Department of Housing and Urban Development	1	\$ 17,500.00
General Services Administration	1	\$ 8,195.36
National Archives and Records Administration	1	\$ 2,731.79
Totals	15,690	\$ 112,229,032.01

** Some award amounts redacted by the agency.³ Redacted awards are reflected as \$0 in these totals.*

³ The database of EAJA awards “may not reveal any information the disclosure of which is prohibited by law or a court order.” 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). The Office of the Chairman deferred to the reporting agency’s decisions about whether to redact specific information.

I. Background

A. Purpose and Legal Framework

EAJA, enacted in 1980, authorizes the award of attorney’s fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and adversary adjudications⁴ when the government’s position is not substantially justified. The stated purpose of EAJA, among other things, is to “diminish the deterrent effect of seeking review of, or defending against, governmental action by providing” for the award of certain attorney’s fees and other expenses against the United States. Nearly all EAJA awards are paid from the agency’s appropriation, not the Judgment Fund.⁵

EAJA awards arise from one of three provisions of the United States Code: (1) 28 U.S.C. § 2412(d), (2) 28 U.S.C. § 2412(b), or (3) 5 U.S.C. § 504.

(1) **28 U.S.C. § 2412(d)**: Most EAJA awards fall under this provision, which authorizes courts to award attorney’s fees and other expenses under the familiar EAJA standard: when a party prevails against the United States in a civil action and the government’s position was not “substantially justified.”⁶ All but eight of the 15,596 EAJA awards reported in the new database fall within this provision.

(2) **28 U.S.C. § 2412(b)**: There are very few § 2412(b) awards. This EAJA provision “expands any existing statutory and court-created exceptions to the American rule (which “provides that each party pays its own litigation costs, regardless of the outcome of a case”⁷) to apply to the federal government as they would to a private party.”⁸ The Office of the Chairman located just two of these awards in FY 2021, which were paid from the Judgment Fund rather than the agency’s appropriation. These awards do not appear in the Office of the Chairman’s database because of the

⁴ EAJA uses the phrase “adversary adjudication,” which it defines to include: (1) formal-hearing proceedings under 5 U.S.C. § 554 (other than “adjudications for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license”) “in which the position of the United States is represented by counsel or otherwise[;]” (2) “any appeal of a decision made pursuant to” the Contract Disputes Act of 1978 “before an agency board of contract appeals[;]” (3) administrative civil penalty proceedings under the Program Fraud Civil Remedies Act; and (4) hearings under the Religious Freedom Restoration Act of 1993. 5 U.S.C. § 504(b)(1)(C); *see also Equal Access to Justice Act*, FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (Mar. 30, 2021), https://sourcebook.acus.gov/wiki/Equal_Access_to_Justice_Act/view.

⁵ 31 U.S.C. § 1304. In 1956, Congress created the Judgment Fund, “a permanent, indefinite appropriation” setting aside an unlimited amount of money “to pay judgments against the United States.” VIVIAN S. CHU & BRIAN T. YEH, CONG. RES. SERV., REPORT R42835, THE JUDGMENT FUND: HISTORY, ADMINISTRATION, AND COMMON USAGE 1 (2013), *available at* <https://fas.org/sgp/crs/misc/R42835.pdf>. The Judgment Fund “is only accessible when the United States has waived its sovereign immunity and certain statutory conditions are met.” *Id.* “Most importantly, the Judgment Fund cannot be used in place of a specific appropriation.” *Id.*

⁶ 28 U.S.C. § 2412(d); *see also* JOANNA R. LAMPE, CONG. RES. SERV., IF11246, IN FOCUS: ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK 1 (2019), *available at* <https://crsreports.congress.gov/product/pdf/IF/IF11246>.

⁷ LAMPE, *supra* note 6, at 1. “The alternative regime, known as the ‘English rule,’ provides that the losing party pays the winner’s attorney’s fees.” *Id.* at 1.

⁸ *Id.*

statutory language included in the Dingell Act, which directs the Office of the Chairman to report awards issued only under § 2412(d) (as well as the awards under 5 U.S.C. § 504).⁹ However, other fees arising from these claims were paid by the agencies' appropriation, and these fees do appear in the database.

(3) **5 U.S.C. § 504:** Very few EAJA awards fall under this provision, which authorizes the award of attorney's fees in adversary adjudications (those subject to the Administrative Procedure Act's formal-hearing provisions).¹⁰ Only three agencies reported any EAJA awards under this provision during FY 2021 (the Department of Agriculture, the Department of Labor, and the Department of Transportation), and these awards accounted for just eight of the 15,691 total EAJA awards.

B. Historical Reporting and Model EAJA Rules

As originally enacted in 1980, EAJA assigned to the Office of the Chairman of ACUS two responsibilities: (1) to track information about the payment of EAJA awards by federal agencies in adversary adjudications, and (2) to work with agencies to establish uniform procedures for submission and consideration of EAJA-award applications in such proceedings.¹¹

⁹ 28 U.S.C. § 2412(d)(5) (repeatedly referencing awards under "this subsection," in other words, those under § 2412(d)).

¹⁰ 5 U.S.C. § 504; *see also id.* §§ 554, 556–557 (formal hearing provisions of the Administrative Procedure Act); LAMPE, *supra* note 6, at 1.

¹¹ Small Business Export Expansion Act of 1980, Pub. L. No. 96-481, §§ 203–204, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504 and 28 U.S.C. § 2412). EAJA originally tasked the Office of the Chairman with reporting only on adversary adjudications and required similar reports on awards in judicial proceedings, first from the Administrative Office of the U.S. Courts and later the Department of Justice. Paul R. Verkuil, Admin. Conf. of the U.S., Office of the Chairman, Report of the Chairman on Agency and Court Awards in FY 2010 under the Equal Access to Justice Act I (Jan. 9, 2013), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-2010-report-chairman>. For more information about the history of EAJA, consult the House Judiciary Committee's 2015 Report accompanying H.R. 3279, the "Open Book on Equal Access to Justice Act," which proposed to reinstate the tracking and reporting requirements of EAJA payments made by the Federal Government. H.R. REP. NO. 114-351, at 2–4 (2015).

Through FY 1994, the Office of the Chairman prepared the required annual reports of EAJA awards in adversary adjudications under this statutory requirement.¹² Congress terminated the reporting requirement in 1995.¹³

In carrying out the second statutory charge of establishing uniform agency procedures for EAJA-award applications, the Office of the Chairman first issued in 1981 model rules to help agencies establish uniform procedures for the submission and consideration of EAJA applications.¹⁴ The Office of the Chairman revised the model rules in 1986¹⁵ and again in 2019.¹⁶

Other agencies have reported on selected EAJA awards over the years, including the Administrative Office of the U.S. Courts,¹⁷ the Department of Justice,¹⁸ the Government Accountability Office,¹⁹ and the Congressional Research Service.²⁰

¹² Verkuil, *supra* note 11, at 1. Other published reports publicly available on the ACUS website include: Thomasina V. Rogers, Admin. Conf. of the U.S., Office of the Chairman, Agency Activity Under the Equal Access to Justice Act, October 1, 1993 – September 30, 1994 (Oct. 31, 1995), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-1994-report-chairman>; Thomasina V. Rogers, Admin. Conf. of the U.S., Office of the Chairman, Agency Activity Under the Equal Access to Justice Act, October 1, 1992 – September 30, 1993 (Feb. 22, 1995), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-1993-report-chairman>; Robert S. Ross, Jr., Admin. Conf. of the U.S., Office of the Chairman, Agency Activities Under the Equal Access to Justice Act, October 1, 1990 – September 30, 1991 (Sept. 8, 1992), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-1991-report-chairman>; Loren A. Smith, Admin. Conf. of the U.S., Office of the Chairman, Agency Activities Under the Equal Access to Justice Act, October 1, 1982 – September 30, 1983 (Dec. 30, 1983), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-1983-report-chairman>.

¹³ Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, §§ 1091, 3003, 109 Stat. 707 (1995); *see also* H.R. REP. NO. 114-351, *supra* note 11, at 4 (describing the elimination). In 2013, the Office of the Chairman voluntarily prepared a report, at the request of several members of Congress, of FY 2010 EAJA awards in both judicial and agency-adjudicative proceedings. Verkuil, *supra* note 11, at 1.

¹⁴ Admin. Conf. of the U.S., Equal Access to Justice Act: Agency Implementation, 46 Fed. Reg. 32900 (June 25, 1981).

¹⁵ Admin. Conf. of the U.S., Model Rules for Implementation of the Equal Access to Justice Act: Issuance of Final Revised Model Rules, 51 Fed. Reg. 16659 (May 6, 1986).

¹⁶ Admin. Conf. of the U.S., Revised Model Rules for Implementation of the Equal Access to Justice Act, 84 Fed. Reg. 38934 (Aug. 8, 2019). *See also* Admin. Conf. of the U.S., Recommendation 2019-4, *Revised Model Rules for Implementation of the Equal Access to Justice Act*, 84 Fed. Reg. 38933 (Aug. 8, 2019).

¹⁷ *See, e.g.*, ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: ACTIVITIES OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 92 (1992) (“Report of Fees and Expenses Under the Equal Access to Justice Act”); ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR: ACTIVITIES OF THE ADMINISTRATIVE OFFICE 119 (1991) (“Report of Fees and Expenses Awarded Under the Equal Access to Justice Act”); ADMIN. OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 34 (1990) (“Report of Fees and Expenses Awarded Under the Equal Access to Justice Act”).

¹⁸ *See, e.g.*, U.S. DEP’T OF JUSTICE, EQUAL ACCESS TO JUSTICE ACT: 1994 ANNUAL REPORT (1995).

¹⁹ *See, e.g.*, U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABILITY ON USDA AND INTERIOR FEE CLAIMS AND PAYMENTS (2012), *available at* <https://www.gao.gov/assets/600/590084.pdf>; U.S. GOV’T ACCOUNTABILITY OFF., GAO/GGD-96-18, PRIVATE ATTORNEYS: SELECTED ATTORNEYS’ FEE AWARDS AGAINST NINE FEDERAL AGENCIES IN 1993 AND 1994 (1995), *available at* <https://www.gao.gov/assets/230/221977.pdf>.

²⁰ *See, e.g.*, LAMPE, *supra* note 6; HENRY COHEN, CONG. RES. SERV., REPORT 94-970, AWARDS OF ATTORNEYS’ FEES BY FEDERAL COURTS AND FEDERAL AGENCIES (2008), *available at* <https://fas.org/sgp/crs/misc/94-970.pdf>.

C. *The Dingell Act*

In March 2019, Congress passed and the President signed the Dingell Act, which required the Office of the Chairman to conduct two related activities to promote increased transparency for EAJA awards.²¹ The Dingell Act required the Office of the Chairman to prepare an annual report on EAJA awards against the government for FY 2019 by March 31, 2020, and to prepare a similar report for every FY thereafter. It also required the Office of the Chairman to establish and maintain a publicly available, online, and searchable database containing detailed information about each award by March 31, 2020.²² The Office of the Chairman launched the database on March 31, 2020.

The database must include EAJA awards in both adversary adjudications²³ and the much larger number of awards in federal-court cases.²⁴ For every award, the Office of the Chairman must report and publish the following information:

- ♦ the case name and its docket number (including a hyperlink, if available);
- ♦ the name of the agency involved;
- ♦ the name of the party to whom the award was made;
- ♦ a description of the claims;
- ♦ the amount of the award; and
- ♦ a brief statement of the legal basis for the award.²⁵

Agency heads must “timely” comply with requests from the Office of the Chairman to supply this information.²⁶

This Report covers the FY 2021 reporting period: October 1, 2020, through September 30, 2021. The Office of the Chairman worked with many federal agencies to collect awards data for FY 2021 and updated the online database, available at <https://eaja.acus.gov>, to make this information about EAJA awards easily accessible to the public.

²¹ Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019) (codified at 5 U.S.C. § 504(e)–(h) and 28 U.S.C. § 2412(d)(5)–(8)). The relevant statutory provisions appear in Appendix A. These provisions were drawn from the Open Book on Equal Access to Justice Act, H.R. 752, 116th Cong. § 2 (2019) (sponsored by Senator Barrasso of Wyoming), and the Open Book on Equal Access to Justice Act, S. 217, 116th Cong. § 2 (2019) (sponsored by Representative Collins of Georgia).

²² These provisions reinstated the tracking and reporting requirements because “[t]he current lack of any comprehensive reporting and record keeping regarding the actual use of EAJA in courts and administrative proceedings makes it difficult, if not impossible, for Congress to assess accurately the impact and effectiveness of EAJA.” H.R. REP. NO. 114-351, *supra* note 11, at 2.

²³ 5 U.S.C. § 504(e)–(h).

²⁴ 28 U.S.C. § 2412(d)(5)–(8).

²⁵ 5 U.S.C. § 504(f); 28 U.S.C. § 2412(d)(6).

²⁶ 5 U.S.C. § 504(h); 28 U.S.C. § 2412(d)(8).

II. Data-Collection Process

This section describes the data-collection process for this FY 2021 Report, including the process of identifying relevant agencies, the Office of the Chairman’s outreach to those agencies, and the reporting process.

A. Identifying Relevant Agencies

The Office of the Chairman determined which agencies to contact as part of the data-collection process by relying on the FY 2020 Report, which listed 58 federal agencies. No federal agencies reported that they did not constitute an “agency” for purposes of the EAJA statute during the data-collection process, and the Office of the Chairman did not identify any additional agencies likely to have relevant EAJA rewards to report. Table 2 lists the 58 federal agencies to which the Office of the Chairman conducted outreach and submitted requests for information about EAJA awards.

The Office of the Chairman determined which agencies to contact as part of the data-collection process for the FY 2020 Report by relying on the FY 2019 Report, which listed 63 federal agencies that might have relevant EAJA awards to report.²⁷ As explained in the FY 2019 Report, five of the 63 entities responded that they did not constitute an “agency” for purposes of the EAJA statute and therefore had no awards to report.²⁸ The Office of the Chairman omitted these five agencies from the FY 2020 data collection request, for a total of 58 federal agencies that year.

Along with reviewing the relevant statutory provisions, the Office of the Chairman originally consulted many sources in preparing the FY 2019 Report in order to (1) create a comprehensive list of federal agencies and (2) identify the subset of relevant federal agencies that might have EAJA awards to report.

First, the Office of the Chairman consulted several of the most authoritative and comprehensive lists of federal agencies. It first consulted ACUS’s *Sourcebook of United States Executive Agencies*, the most up-to-date catalog of federal agencies and other organizational entities.²⁹ Appendix A-1 of the *Sourcebook* lists more than 270 federal agencies and their

²⁷ Matthew Lee Wiener, Admin. Conf. of the U.S., Office of the Chairman, Report of the Office of the Chairman: Equal Access to Justice Act Awards, Report to Congress, Fiscal Year 2019 10–12 (Mar. 31, 2020), <https://www.acus.gov/report/equal-access-justice-act-awards-fy-2019-report-chairman>.

²⁸ These five entities were the Federal Agricultural Mortgage Corporation, the Legal Services Corporation, the National Consumer Cooperative Bank, the Puerto Rico Financial Oversight and Management Board, and the Securities Investor Protection Corporation.

²⁹ JENNIFER L. SELIN & DAVID E. LEWIS, ADMIN. CONF. OF THE U.S., SOURCEBOOK OF UNITED STATES EXECUTIVE AGENCIES (2d ed. 2018), available at <https://www.acus.gov/publication/sourcebook-united-states-executive-agencies-second-edition>. The *Sourcebook* defines an agency as “a federal executive instrumentality directed by one or more political appointees nominated by the President and confirmed by the Senate (the instrumentality itself rather than its bureaus, offices, or divisions).” *Id.* at 14. The *Sourcebook* also considers and accounts for the Administrative Procedure Act’s definition of “agency.” *Id.* at 11 n.38 (citing 5 U.S.C. § 551(1)).

subunits.³⁰ The Office of the Chairman also reviewed for comparison purposes the lists in the *United States Government Manual*³¹ and the congressionally prepared *United States Government Policy and Supporting Positions* (“Plum Book”).³² By consulting these various lists of federal agencies, the Office of the Chairman ensured a comprehensive list.

Second, to decide which of the agencies on the list might have EAJA awards to report, the Office of the Chairman reviewed past EAJA reports and other relevant sources, including past EAJA reports by the Office of the Chairman,³³ the Administrative Office of the U.S. Courts,³⁴ the Department of Justice,³⁵ and the Government Accountability Office.³⁶ The Office of the Chairman also reviewed other relevant sources of information.³⁷

Using these varied sources, the Office of the Chairman generated a targeted list of the 63 federal agencies that might have relevant EAJA awards to report. This targeted list included all agencies that had ever reported an EAJA award and all agencies with independent litigating authority.³⁸ In the case of the 15 agencies designated as executive-branch departments by statute,³⁹

³⁰ *Id.* at 125.

³¹ NAT’L ARCHIVES & REC. ADMIN., THE UNITED STATES GOVERNMENT MANUAL (2019). The *Government Manual* is the “official handbook of the Federal Government” and “generally includes information about the legislative, judicial, and executive branches, as well as quasi-official agencies, international organizations with U.S. membership, and various federal boards, commissions, and committees.” Bobby Ochoa, Listing Agency Officials 28–32 (Nov. 13, 2019) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/final-report-listing-agency-officials> (citing the *Government Manual*).

³² SEN. COMM. ON HOMELAND SEC. & GOV’T AFFAIRS, 116TH CONG., UNITED STATES GOVERNMENT POLICY AND SUPPORTING POSITIONS 212 (THE PLUM BOOK) (Comm. Print 2020), *available at* <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2020/pdf/GPO-PLUMBOOK-2020.pdf>. The *Plum Book* periodically “provides information about more than ‘9,000 Federal civil service leadership and support positions in the legislative and executive branches of the Federal Government that may be subject to noncompetitive appointment.’” Ochoa, *supra* note 31, at 21 (quoting the 2016 Edition of the *Plum Book*).

³³ Verkuil, *supra* note 11, at 9; Rogers, *supra* note 12; Rogers, *supra* note 12; Ross, *supra* note 12; Smith, *supra* note 12.

³⁴ ADMIN. OFFICE OF THE U.S. COURTS, 1992 ANNUAL REPORT, *supra* note 17; ADMIN. OFFICE OF THE U.S. COURTS, 1991 ANNUAL REPORT, *supra* note 17; ADMIN. OFFICE OF THE U.S. COURTS, 1990 ANNUAL REPORT, *supra* note 17.

³⁵ DEP’T OF JUSTICE, 1994 ANNUAL REPORT, *supra* note 18.

³⁶ GOV’T ACCOUNTABILITY OFF., PRIVATE ATTORNEYS, *supra* note 19.

³⁷ They included: (1) Admin. Conf. of the U.S. Office of the Chairman & Stanford Law School, Federal Administrative Adjudication Database, <http://acus.law.stanford.edu/> (last visited Mar. 30, 2021) (housing a database jointly established by the Office of the Chairman and Stanford Law School that includes the most comprehensive list of adjudicative programs ever assembled); (2) an internal Office of the Chairman list of agencies that adopted or implemented the Office of the Chairman’s 1986 Model EAJA Rules (as of 2019); and (3) an ongoing Lexis search for court cases and other relevant materials citing EAJA.

³⁸ SELIN & LEWIS, *supra* note 29, at 105, 106 n.401 (describing the general framework where “Congress has granted control of federal litigation to the Department of Justice in order to promote coherence and consistency in the enforcement of federal law[,]” and “some agencies are authorized to litigate on their own.”).

³⁹ 5 U.S.C. § 101 (designating 15 “Executive departments”).

the Office of the Chairman generally circulated all communications and requests directly to the central headquarters for dissemination to all relevant bureaus, components, and subunits.⁴⁰

Table 2. Final List of Agencies Included in Data Call

List of Agencies Included in Data Call	
Department of Agriculture	Federal Labor Relations Authority
Department of Commerce	Federal Maritime Commission
Department of Defense	Federal Mine Safety and Health Review Commission
Department of Education	Federal Trade Commission
Department of Energy	General Services Administration
Department of Health and Human Services	Government National Mortgage Association
Department of Homeland Security	Inter-American Foundation
Department of Housing and Urban Development	Merit Systems Protection Board
Department of Justice	National Aeronautics and Space Administration
Department of Labor	National Archives and Records Administration
Department of State	National Credit Union Administration
Department of the Interior	National Labor Relations Board
Department of the Treasury	National Transportation Safety Board
Department of Transportation	Nuclear Regulatory Commission
Department of Veterans Affairs	Occupational Safety and Health Review Commission
Board of Governors of the Federal Reserve System	Office of Government Ethics
Commodity Futures Trading Commission	Office of Personnel Management
Consumer Financial Protection Bureau	Pension Benefit Guaranty Corporation
Consumer Product Safety Commission	Postal Regulatory Commission
Environmental Protection Agency	Railroad Retirement Board
Equal Employment Opportunity Commission	Securities and Exchange Commission
Export-Import Bank of the United States	Small Business Administration
Farm Credit Administration	Social Security Administration
Farm Credit System Insurance Corporation	Surface Transportation Board
Federal Communications Commission	United States African Development Foundation
Federal Deposit Insurance Corporation	United States Institute of Peace
Federal Election Commission	United States International Development Finance Corporation
Federal Energy Regulatory Commission	United States International Trade Commission
Federal Housing Finance Agency	United States Postal Service

⁴⁰ The *Sourcebook of United States Executive Agencies* lists 173 bureaus within the 15 executive-branch departments. SELIN & LEWIS, *supra* note 29, at 5–6, 36, 125–30 (defining bureau as “a general term that refers to many different sub-units within larger departments” that vary in size and significance). The Office of the Chairman captured information for most of these subunits by circulating the request to the parent Department and asking it to circulate to all subunits. For example, the Department of Justice’s headquarters collected and reported information about all components, such as the Federal Bureau of Investigation. This efficient and administrable procedure allowed the Office of the Chairman to report information for much more than just the 58 agencies.

B. Agency Outreach and Agency Designees

After generating a clearly defined list of 58 relevant agencies, the Office of the Chairman identified relevant government officials within each agency who were most likely to have the relevant information about EAJA awards or assist the Office of the Chairman with the data-collection process. Most agencies had an agency designee on file with ACUS from the FY 2019 and FY 2020 reporting processes. If this information was outdated or missing, the Office of the Chairman identified an alternate contact for outreach. For most agencies, this initial agency contact was the agency's general counsel (or acting general counsel) or another senior leader.

C. Formal Reporting Process

On October 6, 2021, the Office of the Chairman circulated the formal request for information about each agency's EAJA awards to the agency designees and ACUS government members by email. The request included a spreadsheet and memorandum with detailed instructions for completing the data call for FY 2021. On February 1, 2022, the Office of the Chairman circulated a final request for information.

Ninety-seven percent of agencies complied with the request for data. Sixteen agencies supplied detailed information about EAJA awards during FY 2021 by completing the spreadsheet as instructed. Forty agencies notified the Office of the Chairman that the agency had no awards to report.⁴¹ As of March 31, 2022, only two agencies had not reported.⁴² Tables 3 and 4 identify how each agency complied with the reporting requirement.

⁴¹ This number includes multiple subunits from the Department of Homeland Security and the Department of the Treasury as outlined in Table 4. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, no matter how many subunits reported paying no awards.

⁴² The agencies are the Government National Mortgage Association and the United States African Development Foundation, which likely had no or few awards to report.

Table 3. List of Agencies Reporting EAJA Awards (as of March 31, 2022)

List of Agencies Reporting EAJA Awards
Department of Agriculture
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of Justice
Department of Labor
Department of the Interior
Department of Transportation
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
National Archives and Records Administration
Social Security Administration

Table 4. List of Agencies Reporting No EAJA Awards (as of March 31, 2022)

List of Departments Reporting No EAJA Awards	
Department of Defense	Department of the Treasury: Bureau of the Fiscal Service
Department of State	Department of the Treasury: Financial Crimes Enforcement Network
Department of the Treasury: Departmental Offices	Department of the Treasury: Office of Special Inspector General for the Troubled Asset Relief Program
Department of the Treasury: Alcohol and Tobacco Tax and Trade Bureau	Department of the Treasury: Inspector General for Tax Administration
Department of the Treasury: Bureau of Engraving and Printing	

List of Independent Agencies and Government Corporations Reporting No EAJA Awards	
Board of Governors of the Federal Reserve System	Merit Systems Protection Board
Commodity Futures Trading Commission	National Aeronautics and Space Administration
Consumer Financial Protection Bureau	National Credit Union Administration
Consumer Product Safety Commission	National Labor Relations Board
Equal Employment Opportunity Commission	National Transportation Safety Board
Export-Import Bank of the United States	Nuclear Regulatory Commission
Farm Credit Administration	Occupational Safety and Health Review Commission
Farm Credit System Insurance Corporation	Office of Government Ethics
Federal Communications Commission	Office of Personnel Management
Federal Deposit Insurance Corporation	Pension Benefit Guaranty Corporation
Federal Election Commission	Postal Regulatory Commission
Federal Energy Regulatory Commission	Railroad Retirement Board
Federal Housing Finance Agency	Securities and Exchange Commission
Federal Labor Relations Authority	Small Business Administration
Federal Maritime Commission	Surface Transportation Board
Federal Mine Safety and Health Review Commission	United States Institute of Peace
Federal Trade Commission	United States International Trade Commission
Inter-American Foundation	United States Postal Service
International Development Finance Corporation	

D. Consultation with the Small Business Administration

The Dingell Act requires the Office of the Chairman to submit and publish the annual report “after consultation with the Chief Counsel for Advocacy of the Small Business Administration [(SBA)].”⁴³ After the Office of the Chairman consulted with the Acting Chief Counsel and submitted to him a draft of the annual report for review, he submitted a letter confirming the diligent discharge of this requirement. The letter appears in Appendix B.

⁴³ 5 U.S.C. § 504(e)(1).

E. Summary of the Information Collected and Published

The database displays the eleven data fields (described below) about each reported EAJA award that the Office of the Chairman requested and received from the agencies.

1. **Name:** This field displays the name of the case, no matter if the EAJA award comes from a court case or an adversary adjudication. This field typically includes the names of parties and federal agencies and their leaders. The Office of the Chairman encouraged agencies to standardize case names when feasible.

Name ▾
REDACTED v. Secretary

2. **Number:** This field displays the associated case number. For awards in court cases, this is typically the associated federal court docket number. For adversary adjudications, this may appear as an internal agency docket number.

Number	16-72773
--------	----------

3. **Award Date:** This field displays the date of the order or other court or adjudicative document making the EAJA award, which should fall within FY 2021. During the data-collection process, these dates were standardized and appear in the online database formatted as “MM-DD-YYYY.”

Award date ▾
06-12-2019

4. **Agency:** Along with the next category, this field identifies the agency involved. This field identifies (1) one of the 15 executive branch departments (Department of Labor, for example) or (2) an “Other Agency” option for agencies that are not bureaus, components, subunits, or otherwise housed within one of the 15 executive branch departments (Social Security Administration, for example).

Agency ▾	Agency subcomponent ▾
U.S. Department of Labor	Null

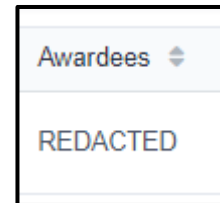
5. **Agency Subcomponent:** Along with the previous category, this field identifies the specific agency subcomponent involved. This field includes the full name of the agency, as well as any commonly used abbreviation in parentheses to facilitate the database’s search and filter functions.⁴⁴ If a department or agency appears in the database, the name of the department or agency will appear as an option in the filter function.

Agency ▾	Agency subcomponent ▾
Other Agency	Social Security Administration (SSA)

⁴⁴ For consistency, the Office of the Chairman relied on a list of common agency abbreviations in Appendix A-2 of the *Sourcebook of United States Executive Agencies*. SELIN & LEWIS, *supra* note 29, at 133–40 (Appendix A-2: List of Agencies and Subunits—By Abbreviation).

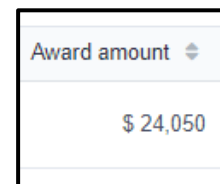
For example, the Social Security Administration is not housed in a larger agency or department, so it is listed as an “Other Agency” in the prior category and appears as “Social Security Administration (SSA)” in the Agency Subcomponent category. For another example, the Federal Bureau of Investigation would appear as an Agency Subcomponent within the Department of Justice. For agencies that did not provide specific agency components, this field will be blank or appear as “Null” in the database.

6. **Awardees:** This field displays “[t]he name of each party to whom the award was made as such party is identified in the order or other court document making the award.”⁴⁵ When possible, agencies identified a single individual or entity for each award. If there were multiple awardees in a single court case or order, agencies typically identified each awardee as a separate award on a separate row (when feasible).



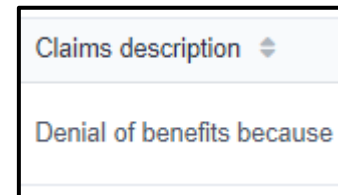
Awardees ▾
REDACTED

7. **Award Amount:** This field displays the total dollar amount of the EAJA award.



Award amount ▾
\$ 24,050

8. **Claims Description:** This field displays a brief “description of the claims.”⁴⁶ The responding agency provided a concise description for each award. Nearly all the descriptions provided enough information for the Office of the Chairman to identify the statute under which the plaintiff filed suit in court cases for purposes of the overview included in Table 7.⁴⁷ Given the nature of these descriptions in some cases, the Office of the Chairman urged agencies to be attentive to privileged, confidential, or otherwise protected information that should not be disclosed by law to the Office of the Chairman or included in the publicly available online database.⁴⁸



Claims description ▾
Denial of benefits because

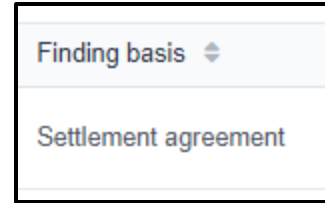
⁴⁵ 5 U.S.C. § 504(f)(4); 28 U.S.C. § 2412(d)(6)(C).

⁴⁶ 5 U.S.C. § 504(f)(3); 28 U.S.C. § 2412(d)(6)(D).

⁴⁷ For each court case, the Office of the Chairman identified the statute under which the plaintiff filed suit for each EAJA award reported by the responding agencies using this field and after reviewing relevant court dockets and filings if the responding agency provided insufficient information. This requirement did not apply to adjudications.

⁴⁸ The Dingell Act states that the publicly available, online, and searchable database “may not reveal any information the disclosure of which is prohibited by law or a court order.” 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). Moreover, the House Judiciary Committee’s 2015 report accompanying H.R. 3279, the Open Book on Equal Access to Justice Act, stated that “ACUS must take appropriate measures to ensure that individual-specific healthcare information, such as an individual’s diagnoses and treatments, is not contained in the database.” H.R. REP. NO. 114-351, *supra* note 11, at 5. In coordination with the responding agencies, the Office of the Chairman has complied with these requirements.

-
9. **Findings Basis:** This field displays the basis for finding that the agency’s position was not substantially justified.⁴⁹ As with the previous field, the Office of the Chairman again flagged the potential issues regarding privileged, confidential, or otherwise protected information that should not be disclosed by law in these summaries or included in the publicly available online database.



The image shows a rectangular box representing a dropdown menu. At the top, the text 'Finding basis' is displayed in a blue font, followed by a small downward-pointing arrow icon. Below this, the text 'Settlement agreement' is displayed in a blue font. The box has a thin black border.

10. **Type of Case (court case or adjudication):** This field displays whether the award was made in an adversary adjudication or in a court case.

11. **Hyperlink:** This field displays a hyperlink to the case, if one is available. Some hyperlinks may direct to documents behind paywalls or other websites requiring a paid subscription. The Office of the Chairman encouraged agencies to provide hyperlinks to free websites that are not behind a paywall, if available (for example, the agency’s website). Common sources of hyperlinks from agencies included the agency’s website, Public Access to Court Electronic Records (PACER), federal court dockets or other court websites, and online databases such as LexisNexis and Westlaw.

⁴⁹ Specifically, the statute requires a brief narrative description of “[t]he basis for the finding that the position of the agency concerned was not substantially justified.” 5 U.S.C. § 504(f)(6); 28 U.S.C. § 2412(d)(6)(F).

III. EAJA Awards Data and Related Information for FY 2021

In FY 2021, federal agencies reported paying more than \$112 million in awards of attorney's fees and other expenses under EAJA.

- ♦ In total, 16 federal agencies reported 15,691 separate awards totaling \$112,229,032.01.
- ♦ Of the 15,691 total awards, 15,683 were made in court cases, and eight were made in adversary adjudications.
- ♦ In total, 40 federal agencies⁵⁰ reported paying no EAJA awards during FY 2021.
- ♦ Of the 58 agencies contacted, the Office of the Chairman achieved a 97 percent compliance rate. Just two agencies did not report by March 31, 2022, in response to the Office of the Chairman's requests.

** All totals current as of March 31, 2022.*

⁵⁰ This number includes multiple subunits from the Department of the Treasury. The Office of the Chairman in the FY 2019 and FY 2020 reports accommodated requests from the Department of Homeland Security and the Department of the Treasury to communicate with each component separately. In FY 2021, the Department of Homeland Security provided a consolidated response. As described in Section II, each Department is only counted once for purposes of the 58 total agencies contacted, regardless of how many subunits reported paying no awards.

Reproduced Table 1. Summary of Agencies Reporting EAJA Awards (by total amount reported)

Agency	# of Awards Reported	Total Amount Reported
Social Security Administration	8,369	\$ 46,962,147.88
Department of Veterans Affairs	7,119	\$ 43,508,910.61
Department of Justice	23	\$ 7,398,751.89
Department of Homeland Security*	120	\$ 3,728,598.63
Department of Agriculture	21	\$ 2,657,203.30
Department of the Interior	11	\$ 2,506,789.43
Department of Commerce	2	\$ 2,400,000.00
Environmental Protection Agency	7	\$ 1,850,158.93
Department of Health and Human Services	6	\$ 664,354.08
Department of Energy	1	\$ 191,330.79
Department of Transportation	4	\$ 144,759.32
Department of Education	1	\$ 115,000.00
Department of Labor	4	\$ 72,600.00
Department of Housing and Urban Development	1	\$ 17,500.00
General Services Administration	1	\$ 8,195.36
National Archives and Records Administration	1	\$ 2,731.79
Totals	15,691	\$ 112,229,032.01

** Some award amounts redacted by the agency.⁵¹ Redacted awards are reflected as \$0 in these totals.*

In the next sections, the Office of the Chairman has assembled other information about the reported EAJA awards, including:

- ♦ a breakdown of court cases and adversary adjudications;
- ♦ a summary of Judgment Fund amounts paid under 31 U.S.C. § 1304; and
- ♦ for court cases, an overview of statutes under which plaintiffs filed suit.

⁵¹ The database of EAJA awards “may not reveal any information the disclosure of which is prohibited by law or a court order.” 5 U.S.C. § 504(g); 28 U.S.C. § 2412(d)(7). The Office of the Chairman deferred to the reporting agency’s decisions about whether to redact specific information.

A. Breakdown of Awards in Court Cases and Adversary Adjudications

In FY 2021, federal agencies reported data showing that the overwhelming majority of EAJA awards were made in court cases. As of March 31, 2022, 15,683 of 15,691 total awards (99.95 percent) were made in court cases and just eight of 15,683 total awards (0.05 percent) in adversary adjudications. Only three federal agencies reported EAJA awards from adversary adjudications: the Department of Agriculture, the Department of Labor, and the Department of Transportation.

Table 5. Breakdown of EAJA Awards by Type of Case

Agency	# in Court Cases	# in Adj.	Total Awards Reported
Social Security Administration	8,369	0	8,369
Department of Veterans Affairs	7,119	0	7,119
Department of Justice	23	0	23
Department of Homeland Security	120	0	120
Department of Agriculture	18	3	21
Department of the Interior	11	0	11
Department of Commerce	2	0	2
Environmental Protection Agency	7	0	7
Department of Health and Human Services	6	0	6
Department of Energy	1	0	1
Department of Transportation	0	4	4
Department of Education	1	0	1
Department of Labor	3	1	4
Department of Housing and Urban Development	1	0	1
General Services Administration	1	0	1
National Archives and Records Administration	1	0	1
Totals	15,683	8	15,691

B. Judgment Fund Amounts Paid (31 U.S.C. § 1304)

The Dingell Act requires the Office of the Chairman to identify in each annual report “any amounts paid under § 1304 of title 31 for a judgment in the case.”⁵² This is a statutory reference to the Judgment Fund,⁵³ which Congress established to pay for “judgments against the United States for which no appropriation is otherwise available.”⁵⁴ The Dingell Act requires the Secretary of the Treasury to publish information about Judgment Fund payments on a public website,⁵⁵ which the Bureau of the Fiscal Service has established.

These awards typically do not appear in the Office of the Chairman’s database, however, because of the statutory language included in the Dingell Act, which directs the Office of the Chairman to report awards issued only under § 2412(d) (as well as the awards under 5 U.S.C. § 504).⁵⁶ The two awards identified this year, listed in Table 6, also appear in the Office of the Chairman’s database, because only a portion of the fees were paid out of the Judgment Fund.⁵⁷ The other 15,689 EAJA awards in the database published by the Office of the Chairman were paid entirely by the responsible agency, not from the Judgment Fund.⁵⁸

⁵² 28 U.S.C. § 2412(d)(5)(D)(i).

⁵³ 31 U.S.C. § 1304.

⁵⁴ *Responsibility of Agencies to Pay Attorney’s Fee Awards Under the Equal Access to Justice Act*, 31 Op. O.L.C. 229, 233–34 (2007) (describing the purpose of the Judgment Fund and citing 31 U.S.C. § 1304); *see also supra* note 5 (describing the Judgment Fund).

⁵⁵ Pub. L. No. 116-9, § 4201(c), 133 Stat. 580 (2019) (codified at 31 U.S.C. § 1304(d)). The Department of the Treasury publishes a “Bi-Weekly Payment Report” on the Bureau of the Fiscal Service’s website. These reports provide regularly updated information about the Judgment Fund. Bureau of the Fiscal Service, Bi-Weekly Payment Report, <https://fiscal.treasury.gov/judgment-fund/bi-weekly-payment-report.html> (last visited Mar. 30, 2022). The Judgment Fund website also provides a searchable database of payment information covering each FY starting in 2006. Bureau of the Fiscal Service, Judgment Fund Payment Search, <https://jfund.fiscal.treasury.gov/jfradSearchWeb/JFPymtSearchAction.do> (last visited Mar. 30, 2022). On this website, the Bureau of the Fiscal Service also publishes Annual Transparency Reports to Congress, which provide data about all Judgment Fund payments each FY. Bureau of the Fiscal Service, Annual Report to Congress, <https://fiscal.treasury.gov/judgment-fund/annual-report-congress.html> (last visited Mar. 30, 2022).

⁵⁶ 28 U.S.C. § 2412(d)(5) (repeatedly referencing awards under “this subsection,” in other words, those under § 2412(d)).

⁵⁷ Table 6 summarizes the detailed information from the Judgment Fund database. To supplement this summary, the Office of the Chairman has assembled the raw data in a consolidated spreadsheet at the following link: <https://www.acus.gov/appendix/eaja-report-fy2021-appendix-material-list-judgment-fund-eaja-payments-fy2021>. The Judgment Fund information is publicly available on the websites identified above at n.55.

⁵⁸ Most of the legal and technical details about the operation of the Judgment Fund are beyond the scope of this Report. More information can be found in several opinions issued by the Department of Justice’s Office of Legal Counsel (*see, e.g., Responsibility of Agencies to Pay Attorney’s Fee Awards Under the Equal Access to Justice Act*, *supra* note 55; *Payment of Attorney’s Fees in Litigation Involving Successful Challenges to Federal Agency Action Arising Under the Administrative Procedure Act and the Citizen-Suit Provisions of the Endangered Species Act*, 24 Op. O.L.C. 311 (2000); *Authority of USDA to Award Monetary Relief for Discrimination*, 18 Op. O.L.C. 52 (1994); *Payment of Attorney Fee Awards Against the United States Under 28 U.S.C. § 2412(b)*, 7 Op. O.L.C. 180 (1983); *Funding of Attorney Fee Awards Under the Equal Access to Justice Act*, 6 Op. O.L.C. 204 (1982); *Award of Attorney Fees in Administrative Adjudications Under § 609 of the Federal Aviation Act*, 6 Op. O.L.C. 197 (1982)). The *Justice Manual* also provides relevant information (DEP’T OF JUSTICE, JUSTICE MANUAL §§ 4-10.000 *et seq.*).

Table 6. List of EAJA Awards Appearing in Judgment Fund Database (by date)

Agency	Amount	Date
Dep't of Homeland Security (TSA)	\$61,597.81	Dec. 4, 2020
Dep't of Education	\$10,000.00	May 3, 2021
Total	\$71,597.81	

("Judgments Against the Government"), *available at* <https://www.justice.gov/jm/jm-4-10000-judgments-against-government> (last visited Mar. 30, 2022)). The Congressional Research Service has also published helpful reports and resources on the subject of the Judgment Fund, as well as EAJA generally (LAMPE, *supra* note 6; CHU & YEH, *supra* note 5; COHEN, *supra* note 20.).

C. Overview of Statutes Under Which Plaintiffs Filed Suit in Court Cases

For court cases, the Dingell Act requires the Office of the Chairman to identify in each annual report “the statute under which the plaintiff filed suit.”⁵⁹ Most agencies reported the nature of the plaintiff’s lawsuit in the “Claims Description” field. Table 7 provides a broad overview of the major claims involved in the litigation resulting in EAJA awards for each reporting agency. In formulating this information, the Office of the Chairman examined the agency-awards data and reviewed publicly available court documents and other relevant court filings. The information presented below is merely intended to provide a high-level overview. It is important to keep in mind that plaintiffs can assert multiple causes of action within a single complaint and that multiple cases can be consolidated.⁶⁰ This requirement did not apply to adjudications.

⁵⁹ 28 U.S.C. § 2412(d)(5)(D)(iii).

⁶⁰ One example of possible distortions when presenting the information generally in this table is that it can overrepresent certain statutes. For example, nearly all of the 6,567 awards reported by the Department of Veterans Affairs arose under the Veterans’ Benefits Act. In contrast, only one EAJA plaintiff received an EAJA award in a court case from the Department of Justice in an action under the Edward Byrne Memorial Justice Assistance Grant Program (listed as JAG in Table 7). Thus, the table can appear to overrepresent certain statutes and distort the relative prominence of certain statutes for certain agencies.

Table 7. Overview of Statutes Under Which EAJA Plaintiffs Filed Suit in Court Cases (by Agency)

Agency	Claims*
Department of Agriculture	ANILCA; APA; ESA; FSA; NEPA; NFMA
Department of Commerce	APA; RFRA; U.S. Constitution
Department of Education	APA
Department of Energy	APA; NEPA
Department of Health and Human Services	APA; FDCA; SSA
Department of Homeland Security	APA; CFR; CRA; CSPA; DJA; INA; MA; PWHC; U.S. Constitution
Department of Housing and Urban Development	U.S. Constitution
Department of Justice	AGDS; APA; FOIA; FTCLA; INA; JAG; PWHC; U.S. Constitution
Department of Labor	APA; FOIA
Department of the Interior	APA; ESA; FLPMA; NEPA; NFMA; NHPA; NPATMA; U.S. Constitution
Department of Transportation	No Court Cases ⁶¹
Department of Veterans Affairs	BWA; VBA
Environmental Protection Agency	APA; CWA; FIFRA
General Services Administration	APA
National Archives and Records Administration	APA
Social Security Administration	SSA

* Statutes listed alphabetically. List of abbreviations on next page.

⁶¹ This reporting requirement applied only to court cases and did not apply to adjudications. Thus, agencies reporting only adjudications have the label “No Court Cases” for clarity.

List of Abbreviations

Abbrev.	Common Name of Act	Citation
AGDS	Attorney General Duties Statute	34 U.S.C. § 10102 <i>et seq.</i>
ANILCA	Alaska National Interest Lands Conservation Act	16 U.S.C. § 3101 <i>et seq.</i>
APA	Administrative Procedure Act	5 U.S.C. §§ 553, 706 <i>et seq.</i>
BWA	Blue Water Navy Vietnam Veterans Act	38 U.S.C. § 1116A
CRA	Civil Rights Act	42 U.S.C. § 1981 <i>et seq.</i>
CSPA	Child Status Protection Act	8 U.S.C. § 1151 <i>et seq.</i>
CWA	Clean Water Act	33 U.S.C. § 1251 <i>et seq.</i>
DJA	Declaratory Judgment Act	28 U.S.C. § 2201 <i>et seq.</i>
ESA	Endangered Species Act	16 U.S.C. § 1531 <i>et seq.</i>
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	7 U.S.C. § 136 <i>et seq.</i>
FLPMA	Federal Land Policy and Management Act	43 U.S.C. § 1701 <i>et seq.</i>
FOIA	Freedom of Information Act	5 U.S.C. § 552 <i>et seq.</i>
FSA	Food Security Act	7 U.S.C. § 3801 <i>et seq.</i>
FTCLA	Federal Tort Claims Act	28 U.S.C. §§ 1346(b), 2671 <i>et seq.</i>
INA	Immigration and Nationality Act	8 U.S.C. § 1101 <i>et seq.</i>
JAG	Edward Byrne Memorial Justice Assistance Grant Program	34 U.S.C. § 10151 <i>et seq.</i>
MA	Mandamus Act	28 U.S.C. § 1361 <i>et seq.</i>
NEPA	National Environmental Policy Act	42 U.S.C. § 4321 <i>et seq.</i>
NFMA	National Forest Management Act	16 U.S.C. § 1600 <i>et seq.</i>
NHPA	National Historic Preservation Act	54 U.S.C. §§ 300101 <i>et seq.</i>
NPATMA	National Parks Air Tour Management Act	49 U.S.C. § 40128 <i>et seq.</i>
PWHC	Petition for Writ of Habeas Corpus	28 U.S.C. § 2241 <i>et seq.</i>
RFRA	Religious Freedom Restoration Act	42 U.S.C. § 2000bb <i>et seq.</i>
SSA	Social Security Act	42 U.S.C. § 301 <i>et seq.</i>
VBA	Veterans' Benefits Act	38 U.S.C. § 101 <i>et seq.</i>

IV. Database and Website

A. Simultaneous Release of Data and Report in March 2022

In 2020, the Office of the Chairman created two websites related to the EAJA reporting requirements: (1) a “Project Page” at www.acus.gov/EAJA, and (2) an “EAJA Database” at <https://eaja.acus.gov>. The Project Page provides a centralized clearinghouse for information about EAJA. As shown in the picture on the next page, this ACUS website hosts background information about EAJA and the reporting requirements; provides easy access to the annual reports, including summaries and statistics; lists contact information; and provides a link to the EAJA awards database at <https://eaja.acus.gov>.

The EAJA Database at <https://eaja.acus.gov> houses all EAJA awards information in an easily accessible database. Simultaneous with the publication of this FY 2021 Report, the Office of the Chairman updated the online searchable database of EAJA awards.

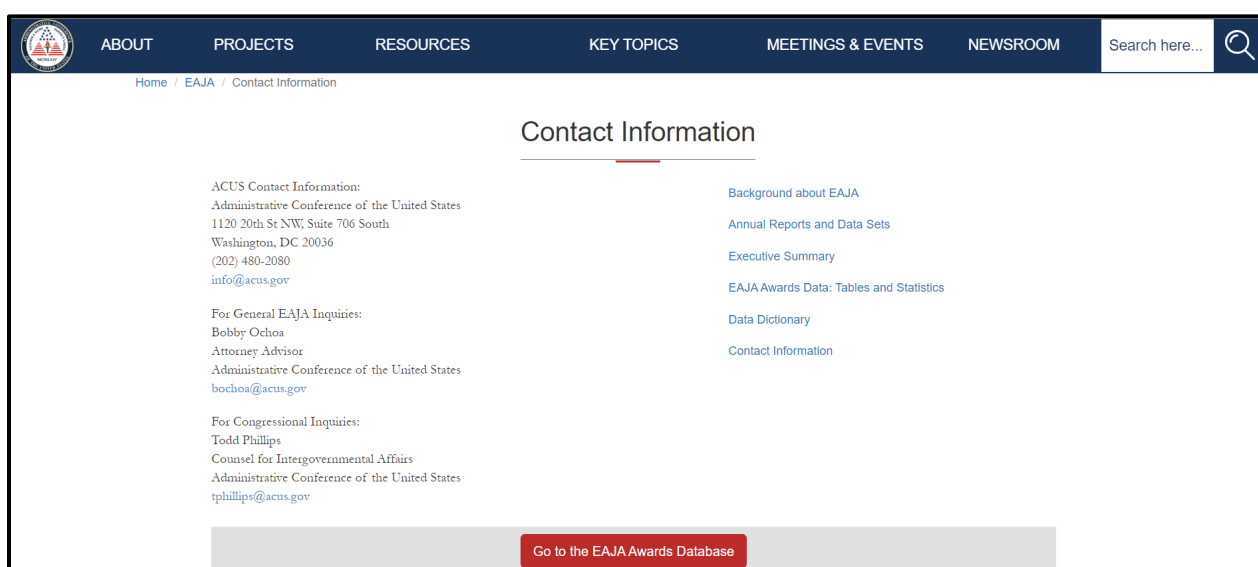
The EAJA Database includes all reported awards from agencies during the FY 2021 data-collection process as of March 31, 2022. The EAJA Database also includes the awards agencies reported for FY 2020 and FY 2019. Given the Office of the Chairman’s responsibility for maintaining this online database, the Office of the Chairman will promptly incorporate any new, supplementary, or amended awards information reported by agencies after the deadlines directly in the online database. The annual report becomes final on the publication date, and the Office of the Chairman will not make any post-release changes. As a result, the online database and downloadable data sets are the best sources for the most updated information about each FY’s EAJA awards moving forward.

EAJA Project Page at www.acus.gov/EAJA	EAJA Awards Database at https://eaja.acus.gov
<ul style="list-style-type: none">• Annual reports• Link to online database• Background information• Summaries and statistics• Data dictionary• Downloadable data sets• Contact information	<ul style="list-style-type: none">• Eleven information fields about each award• Ability to search, sort, filter, and export• Detailed award view

B. The ACUS Project Page at www.acus.gov/EAJA

In order to seamlessly integrate the new EAJA content into the current ACUS website, the Office of the Chairman created a Project Page dedicated to the new EAJA reporting responsibilities at www.acus.gov/EAJA. This website provides convenient access to:

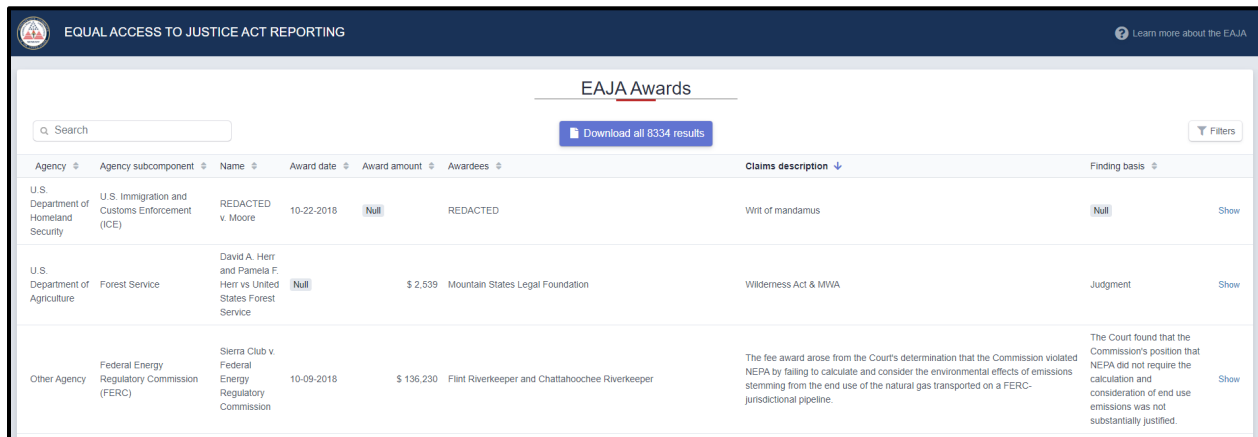
- ♦ background information about the Office of the Chairman's EAJA reporting responsibilities;
- ♦ summaries and statistics about the data for each FY;
- ♦ a data dictionary, which describes the information fields about each award that the Office of the Chairman collected and included in the online database;
- ♦ each of the Office of the Chairman's annual reports;
- ♦ the downloadable raw data sets in Excel spreadsheets;
- ♦ contact information for relevant Office of the Chairman staff members; and
- ♦ a direct link to the EAJA Database at <https://eaja.acus.gov>.



The Project Page at www.acus.gov/EAJA describing background information.

C. The EAJA Database at <https://eaja.acus.gov>

To carry out the Dingell Act's requirements carefully and to facilitate the public's ability to view, search, and sort the information in the new EAJA database, the Office of the Chairman established a dedicated website hosting EAJA awards information at <https://eaja.acus.gov>. This dedicated website contains more functionality and features that ensure users can search the database easily.



The screenshot shows the 'EAJA Awards' page on the 'EQUAL ACCESS TO JUSTICE ACT REPORTING' website. The page has a search bar, a 'Download all 8334 results' button, and a 'Filters' button. Below these is a table with columns: Agency, Agency subcomponent, Name, Award date, Award amount, Awardees, Claims description, and Finding basis. The table lists three awards.

Agency	Agency subcomponent	Name	Award date	Award amount	Awardees	Claims description	Finding basis
U.S. Department of Homeland Security	U.S. Immigration and Customs Enforcement (ICE)	REDACTED v. Moore	10-22-2018	Null	REDACTED	Writ of mandamus	Null
U.S. Department of Agriculture	Forest Service	David A. Herr and Pamela F. Herr vs United States Forest Service	Null	\$ 2,539	Mountain States Legal Foundation	Wilderness Act & MWA	Judgment
Other Agency	Federal Energy Regulatory Commission (FERC)	Sierra Club v. Federal Energy Regulatory Commission	10-09-2018	\$ 136,230	Flint Riverkeeper and Chattahoochee Riverkeeper	The fee award arose from the Court's determination that the Commission violated NEPA by failing to calculate and consider the environmental effects of emissions stemming from the end use of the natural gas transported on a FERC-jurisdictional pipeline.	The Court found that the Commission's position that NEPA did not require the calculation and consideration of end use emissions was not substantially justified.

The EAJA Database at <https://eaja.acus.gov> listing all EAJA awards.

The website's landing page brings users directly to the publicly available, online, and searchable EAJA Database, which is updated annually. Each reported EAJA award is listed in a different row. From this landing page, which displays 15 awards per page, users can view, search, sort, filter, and export the information in the database. The database includes the same eleven types of information about each reported EAJA award that the Office of the Chairman requested and received from the agencies.⁶²

The remainder of this section describes the online database's various features and functions available to the public.⁶³

⁶² The landing-page view displays 8 fields, and users may view the details of all fields for an award in a case details view, which displays detailed information for each individual award. Descriptions of the 11 fields are included in Section II.E.

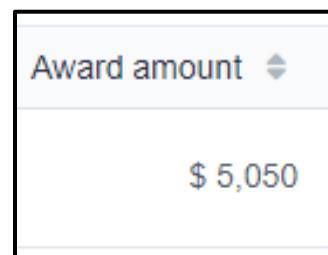
⁶³ Along with the visible features and functions described in the next section, the Office of the Chairman included many behind-the-scenes features and functions to create an accessible, compliant, and responsive database and website. Some of the key accessibility features include setting up access to key attributes for main controls to enable keyboard shortcuts; adding scope attributes to table headers; assigning presentation roles to markups (icons); adding descriptive labels to links; improving the layout elements to improve use with small screens; permitting expanded scrolling functionality for small screens; and adding more functionality to the administrative side of the website.

Database Features and Functions

Navigation: The online database includes navigation buttons (“Previous” and “Next”) at the bottom right of the webpage. There is also a status message at the bottom left of the webpage showing how many awards are displayed currently (e.g., “Viewing 15 of 51 results”).



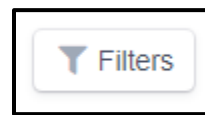
Sorting: To make the online database easily accessible and navigable, the default page displays for each award a subset of eight out of the total eleven fields: agency, agency subcomponent, case name, award date, award amount, awardees, claims description, and findings basis. Users may sort all the displayed fields by column by clicking on the up/down arrows to the right of the field’s title (as shown in the figure).



Searching: In a box anchored above the database information on the left side of the page, the website includes an intuitive search bar that can find and display results across all fields and awards.



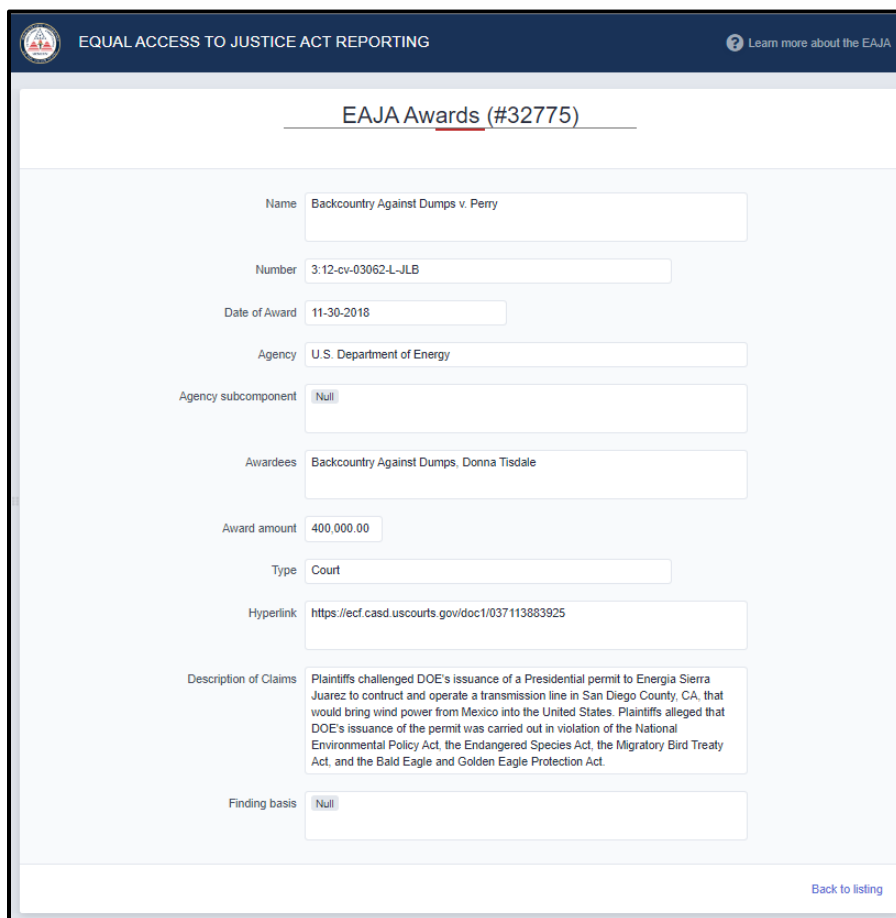
Filtering: There is also a “Filters” button in a box anchored above the database information on the right side of the page. When selected, the filter function provides the option to conduct more complex searches and filter awards information by agency, by award date, and by award amount. For example, users can use this function to search for awards from a specific agency or department, or for awards exceeding a certain dollar amount.



Detailed View and Suppressed Fields: The database displays eight of eleven information fields. The remaining fields (“Number,” “Type,” and “Hyperlink”) still reside in the database, and users can access the information by using the case details view or the export/download function described in the next section.

Users may select a single award for a more detailed and informative view. To view the details of a single award, users can select a specific award by clicking on the “Show” button at the far right of the page. This will open a new page showing more detailed information about the selected award, including the remaining three fields.

Show



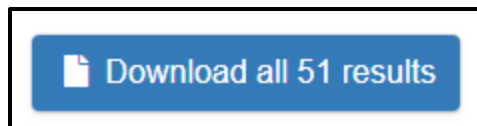
The screenshot shows the 'EQUAL ACCESS TO JUSTICE ACT REPORTING' header with a logo on the left and a link 'Learn more about the EAJA' on the right. Below the header, the title 'EAJA Awards (#32775)' is centered. The main content area contains a form with the following fields: Name (Backcountry Against Dumps v. Perry), Number (3:12-cv-03062-L-JLB), Date of Award (11-30-2018), Agency (U.S. Department of Energy), Agency subcomponent (Null), Awardees (Backcountry Against Dumps, Donna Tisdale), Award amount (400,000.00), Type (Court), Hyperlink (https://ecf.casd.uscourts.gov/doc1/037113883925), Description of Claims (Plaintiffs challenged DOE's issuance of a Presidential permit to Energia Sierra Juarez to construct and operate a transmission line in San Diego County, CA, that would bring wind power from Mexico into the United States. Plaintiffs alleged that DOE's issuance of the permit was carried out in violation of the National Environmental Policy Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle and Golden Eagle Protection Act.), and Finding basis (Null). A 'Back to listing' link is located at the bottom right of the form.

Name	Backcountry Against Dumps v. Perry
Number	3:12-cv-03062-L-JLB
Date of Award	11-30-2018
Agency	U.S. Department of Energy
Agency subcomponent	Null
Awardees	Backcountry Against Dumps, Donna Tisdale
Award amount	400,000.00
Type	Court
Hyperlink	https://ecf.casd.uscourts.gov/doc1/037113883925
Description of Claims	Plaintiffs challenged DOE's issuance of a Presidential permit to Energia Sierra Juarez to construct and operate a transmission line in San Diego County, CA, that would bring wind power from Mexico into the United States. Plaintiffs alleged that DOE's issuance of the permit was carried out in violation of the National Environmental Policy Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle and Golden Eagle Protection Act.
Finding basis	Null

Back to listing

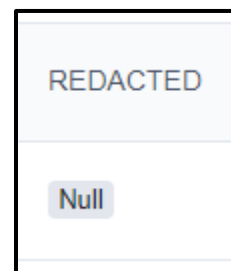
Case details view in the EAJA Database at <https://eaja.acus.gov>.

Export/Download Function: Users may download the entire database (or a subset based on a search or filter) into a spreadsheet that may be viewed, searched, and sorted offline. They may do so simply by selecting the button reading “Download all ___ results” in a box centrally anchored above the database information (as shown in the figure). This will export the database (or a subset based on a search or filter) to a basic comma separated values (.csv) file.



Alternatively, the raw data sets are available to download as an Excel spreadsheet from the ACUS Project Page at www.acus.gov/EAJA/reports, which includes all eleven fields for each award. With these formats, users can easily view, search, sort, and filter the database information offline in other software (including Microsoft Excel).

Redaction: Reporting agencies supplied all information populating the online database during the data-collection process. The Office of the Chairman did not apply any substantive redactions to reported information. Rather, it asked reporting agencies to be attentive to privileged, confidential, or otherwise protected information that should not, by law, be disclosed to the Office of the Chairman or included in the database. As required, reporting agencies applied redactions for certain information. Sometimes these redactions appear in the database conspicuously (using “Redacted” or “Not provided” in place of the information). In other instances, the information is simply omitted or appears as a blank or null field.



When it had questions or concerns about the data agencies submitted, the Office of the Chairman reached out directly to each agency for resolution and approval of any necessary technical changes and to address any other issues. The Office of the Chairman generally deferred to the agency’s resolution of any data-related issues, particularly with respect to the agency’s legal conclusions (such as those about specific redactions). The Office of the Chairman will use a similar resolution process to address any future issues that may arise with information in the database. In the event of such requests or issues, the database website also includes a redaction function (aside from the ability to simply redact or remove the underlying database information on a temporary or permanent basis, if necessary).

V. Moving Forward

The Dingell Act requires the Office of the Chairman to prepare reports for FY 2019 “and every fiscal year thereafter[.]”⁶⁴ The Office of the Chairman will launch another data-collection process at the end of FY 2022 and prepare a new report as well as update the EAJA Database. Each year, the Office of the Chairman will continue to integrate new data, host each new report, and preserve and archive prior data sets. Over time, the Office of the Chairman plans to iterate and improve upon this initial version of the website and database. As agency tracking and reporting processes improve over time, so too will the government-wide accuracy and comprehensiveness of this database. The Office of the Chairman will work to maintain a high agency-response rate and track legal developments to ensure the database captures the universe of relevant agencies each year. After receiving communications from agency points of contact addressing common questions and issues (both technical and legal) related to the reporting process, the Office of the Chairman also plans to coordinate with agencies and promote best practices to improve the tracking and reporting process over time.

If any agency seeks to correct, redact, or supplement information in the online database, the Office of the Chairman will incorporate those changes on the website and public database directly. Although the online database is subject to change in this way, the annual report becomes final on the publication date, and the Office of the Chairman will not similarly update the final report.

If any person or other entity alerts the Office of the Chairman (through the new website or otherwise) that information in the online database should be redacted, the Office of the Chairman will work diligently with the relevant agency and the person or entity to address the issue. The Office of the Chairman will generally defer to the agency’s resolution of the issue, particularly with respect to the agency’s legal conclusions.

To contact the Office of the Chairman about suggested improvements to the website, please use the EAJA website or the ACUS website, or contact the appropriate staff member using the contact information provided at the end of this report and on the Project Page.

⁶⁴ 5 U.S.C. § 504(e)(1); 28 U.S.C. § 2412(d)(5)(A).

Subtitle C—Open Book on Equal Access to Justice

SEC. 4201. FEDERAL ACTION TRANSPARENCY.

(a) MODIFICATION OF EQUAL ACCESS TO JUSTICE PROVISIONS.—

(1) AGENCY PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (c)(1), by striking “, United States Code”;

(B) by redesignating subsection (f) as subsection (i); and

(C) by striking subsection (e) and inserting the following:

“(e)(1) Not later than March 31 of the first fiscal year beginning after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and every fiscal year thereafter, the Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall submit to Congress and make publicly available online a report on the amount of fees and other expenses awarded during the preceding fiscal year under this section.

“(2) Each report under paragraph (1) shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information that may aid Congress in evaluating the scope and impact of such awards.

“(3)(A) Each report under paragraph (1) shall account for all payments of fees and other expenses awarded under this section that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is sealed or otherwise subject to a nondisclosure provision.

“(B) The disclosure of fees and other expenses required under subparagraph (A) shall not affect any other information that is subject to a nondisclosure provision in a settlement agreement.

“(f) As soon as practicable, and in any event not later than the date on which the first report under subsection (e)(1) is required to be submitted, the Chairman of the Administrative Conference of the United States shall create and maintain online a searchable database containing, with respect to each award of fees and other expenses under this section made on or after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the following information:

“(1) The case name and number of the adversary adjudication, if available, hyperlinked to the case, if available.

“(2) The name of the agency involved in the adversary adjudication.

“(3) A description of the claims in the adversary adjudication.

“(4) The name of each party to whom the award was made as such party is identified in the order or other court document making the award.

“(5) The amount of the award.

“(6) The basis for the finding that the position of the agency concerned was not substantially justified.

“(g) The online searchable database described in subsection (f) may not reveal any information the disclosure of which is prohibited by law or a court order.

“(h) The head of each agency shall provide to the Chairman of the Administrative Conference of the United States in a timely manner all information requested by the Chairman to comply with the requirements of subsections (e), (f), and (g).”.

(2) COURT CASES.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

“(5)(A) Not later than March 31 of the first fiscal year beginning after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and every fiscal year thereafter, the Chairman of the Administrative Conference of the United States shall submit to Congress and make publicly available online a report on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection.

“(B) Each report under subparagraph (A) shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information that may aid Congress in evaluating the scope and impact of such awards.

“(C)(i) Each report under subparagraph (A) shall account for all payments of fees and other expenses awarded under this subsection that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is sealed or otherwise subject to a nondisclosure provision.

“(ii) The disclosure of fees and other expenses required under clause (i) shall not affect any other information that is subject to a nondisclosure provision in a settlement agreement.

“(D) The Chairman of the Administrative Conference of the United States shall include and clearly identify in each annual report under subparagraph (A), for each case in which an award of fees and other expenses is included in the report—

“(i) any amounts paid under section 1304 of title 31 for a judgment in the case;

“(ii) the amount of the award of fees and other expenses; and

“(iii) the statute under which the plaintiff filed suit.

“(6) As soon as practicable, and in any event not later than the date on which the first report under paragraph (5)(A) is required to be submitted, the Chairman of the Administrative Conference of the United States shall create and maintain online a searchable database containing, with respect to each award of fees and other expenses under this subsection made on or after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, the following information:

“(A) The case name and number, hyperlinked to the case, if available.

“(B) The name of the agency involved in the case.

“(C) The name of each party to whom the award was made as such party is identified in the order or other court document making the award.

“(D) A description of the claims in the case.

“(E) The amount of the award.

“(F) The basis for the finding that the position of the agency concerned was not substantially justified.

“(7) The online searchable database described in paragraph (6) may not reveal any information the disclosure of which is prohibited by law or a court order.

“(8) The head of each agency (including the Attorney General of the United States) shall provide to the Chairman of the Administrative Conference of the United States in a timely manner all information requested by the Chairman to comply with the requirements of paragraphs (5), (6), and (7).”.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Section 2412 of title 28, United States Code, is amended—

(A) in subsection (d)(3), by striking “United States Code,”; and

(B) in subsection (e)—

(i) by striking “of section 2412 of title 28, United States Code,” and inserting “of this section”; and

(ii) by striking “of such title” and inserting “of this title”.

(b) JUDGMENT FUND TRANSPARENCY.—Section 1304 of title 31, United States Code, is amended by adding at the end the following:

“(d) Beginning not later than the date that is 60 days after the date of enactment of the John D. Dingell, Jr. Conservation, Management, and Recreation Act, and unless the disclosure of such information is otherwise prohibited by law or a court order, the Secretary of the Treasury shall make available to the public on a website, as soon as practicable, but not later than 30 days after the date on which a payment under this section is tendered, the following information with regard to that payment:

“(1) The name of the specific agency or entity whose actions gave rise to the claim or judgment.

“(2) The name of the plaintiff or claimant.

“(3) The name of counsel for the plaintiff or claimant.

“(4) The amount paid representing principal liability, and any amounts paid representing any ancillary liability, including attorney fees, costs, and interest.

“(5) A brief description of the facts that gave rise to the claim.

“(6) The name of the agency that submitted the claim.”.

Appendix B. SBA Consultation Confirmation Letter



March 22, 2022

Matthew Gluth
Attorney Advisor
Administrative Conference of the United States
1120 20th Street, NW
Washington, DC 20036

Dear Mr. Gluth:

This is to acknowledge that the consultation required by John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, § 4201, 133 Stat. 580 (2019),¹ took place via email on March 3, 2022, and I received the draft report on March 9, 2022. I continue to look forward to working with the Administrative Conference on further iterations of the report and other projects in the coming years.

Sincerely,

(for) Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration
Washington, DC 20416

¹ Codified at 5 U.S.C. § 504(e)(1).

Contact Information

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